

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:4

PLR-137525-13

Date:

March 04, 2014

Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Sub 6 =

Sub 7 =

Date 1 =

Date 2 =

Amount 1 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 23, 2013, submitted on behalf of Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election under § 1.1502-36(d)(6) (the “Election”). Specifically, Parent is requesting an extension of time for Parent to file an election under § 1.1502-36(d)(6)(i)(A) for the taxable year ended Date 2 for Sub 2 to reduce its adjusted basis in the stock of Sub 3 by Amount 1. Additional information was submitted in documents dated December 9, 2013, February 3, 2014, February 21, 2014, and February 27, 2014. The material information is summarized below.

Parent was the common parent of a consolidated group (“Parent Group”). Parent Group consisted of: Parent; Parent’s wholly-owned subsidiary, Sub 1; Sub 1’s wholly-owned subsidiary, Sub 2; Sub 2’s wholly-owned subsidiary, Sub 3; Sub 3’s wholly-owned subsidiary, Sub 4; and Sub 4’s wholly-owned subsidiaries, Sub 5 and Sub 6. Sub 4 also wholly-owned Sub 7, an entity disregarded as separate from its owner for Federal tax purposes.

Pursuant to a restructuring on Date 1, the following steps took place. Sub 1 distributed all the stock of Sub 2 to Parent in a § 301 distribution. The stock of Sub 1 was then contributed in a series of exchanges all intended to qualify under § 351; first by Parent to Sub 2, then by Sub 2 to Sub 3, and then by Sub 3 to Sub 4. Finally, Sub 4 contributed Sub 5, Sub 6, and Sub 7 to Sub 1. The restructuring resulted in Parent owning Sub 2, which owned Sub 3, which owned Sub 4, which owned Sub 1. Sub 1 owned Subs 5 - 7. Lastly, also on Date 1, pursuant to a stock for debt exchange, Sub

2's ownership in Sub 3 was reduced below 80 percent, breaking affiliation between Sub 2 and Sub 3.

An election under § 1.1502-36 with respect to Sub 2's transfer (within the meaning of § 1.1502-36(f)(10)) of Sub 3's stock was due by the due date (including extensions) of Parent's Group consolidated return for the taxable year ending Date 2. However, for various reasons, no election was made. Subsequently, Parent submitted this request, under § 301.9100-3, for an extension of time to file the Election.

Parent has represented that it is not seeking to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 at the time Parent requested relief and the new return position requires or permits a regulatory election for which relief is requested.

Section 1.1502-36 provides rules for adjusting members' (M) basis in stock of a subsidiary (S) and for reducing S's attributes when M transfers a loss share of S stock. Section 1.1502-36(a)(1).

Section 1.1502-36(d) provides rules to reduce attributes of S and its lower-tier subsidiaries to the extent they duplicate a net loss on shares of S stock transferred by members in one transaction.

Section 1.1502-36(d)(6)(i) provides that notwithstanding the general operation of § 1.1502-36(d), the parent of a consolidated group ("P") may elect to reduce the potential for loss duplication, and thereby reduce or avoid attribute reduction. Under this election, P may elect: (A) to reduce all or any portion (including any portion in excess of a specified amount) of members' bases in transferred loss shares of S stock; (B) to reattribute all or any portion (including any portion in excess of a specified amount) of S's Category A, Category B, and Category C attributes, to the extent they would otherwise be subject to reduction under § 1.1502-36(d); or (C) any combination thereof.

Section 1.1502-36(d)(6)(ii) provides that an election to reduce loss duplication under § 1.1502-36(d)(6) is made in the manner provided in § 1.1502-35(e)(5).

Section 1.1502-36(e)(5) states that the elections provided by § 1.1502-36 are irrevocable and made in a statement entitled "Section 1.1502-36 Statement" that must be included on or with the group's timely filed return (original or amended, if filed by the due date of the return, including extensions) for the taxable year of the transfer of the subsidiary stock to which the election relates.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

The elections by a consolidated group to reduce a member's basis in its loss shares of subsidiary stock under § 1.1502-36(d)(6)(i)(A) are regulatory elections. Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes to the satisfaction of the Commissioner that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make the Election, and the request for relief was filed before the failure to timely make the Election was discovered by the Internal Revenue Service. See § 301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the affidavits submitted and the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, provided that Parent Group qualifies substantively to file the Election, we grant an extension of time under § 301.9100-3, until sixty (60) days from the date on this letter, for Parent to file the Election.

Parent should file the Election in accordance with § 1.1502-36(e)(5). Parent's Group returns must be amended to attach the election statements required by § 1.1502-36(e)(5). A copy of this letter must be attached to the election statement. Alternatively, if Parent files its returns electronically, Parent may satisfy the requirement of attaching a copy of this letter by attaching a statement to the Parent Group's amended return that provides the date and control number (PLR-137525-13) of this letter ruling.

The above extension of time is conditioned on Parent's Group and each of its members' (both before and after the year of the transactions) tax liabilities, if any, not being lower in the aggregate for all years to which the Election applies, than they would have been if the Election had been timely made (taking into account the time value of money). We express no opinion as to Parent's Group or any of its members' tax liabilities. A

determination thereof will be made by the Director's office upon audit of the income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any item discussed or referenced in this letter. In particular, we express no opinion with respect to whether Parent qualifies substantively to make the Election. In addition, we express no opinion as to the tax effects or consequences of filing the Election late under the provisions of any other section of the Internal Revenue Code or regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in this letter.

For purposes of granting relief under § 301.9100-3, we relied on certain statements and representations made under penalty of perjury by Parent, Company Official, and Tax Professional. The Director, however, should verify all essential facts. In addition, notwithstanding that an extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable continue to apply.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)